

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JOSUE PAGUADA,

Plaintiff,

-v-

MET-RX SUBSTRATE TECHNOLOGY,

Defendant.

CIVIL ACTION NO.: 20 Civ. 6672 (PGG) (SLC)

ORDER RECOMMENDING DISMISSAL

SARAH L. CAVE, United States Magistrate Judge:

On August 20, 2020, Plaintiff filed the Complaint, and on September 16, 2020 filed an Amended Complaint. (ECF Nos. 1, 10). Federal Rule of Civil Procedure 4(m) provides 90 days to serve a complaint and when Mr. Paguada did not serve the Amended Complaint within 90 days, and the Court issued an Order to Show Cause as to why this case should not be dismissed for failure to prosecute. (ECF No. 13). Mr. Paguada's response was due January 15, 2021, and to date, no response has been submitted to the Court. (*Id.*)

Under Rule 41(b) of the Federal Rules of Civil Procedure, a district court may dismiss an action sua sponte for failure to prosecute after notifying the plaintiff. *See Murray v. Smythe*, 18 Civ. No. 4705 (KMK), 2020 WL 4482644, at *2 (S.D.N.Y. Aug. 3, 2020) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)). The Court must consider the duration of the plaintiff's failures, whether he received notice that further delay would result in dismissal, defendant's prejudice from further delay, the efficacy of lesser sanctions, and the balance between "alleviating court calendar congestion and protecting" plaintiff's right to due process. *Id.*

The Court concludes that these factors weigh in favor of dismissing this case. Mr. Paguada has been advised that failure to respond to the Order to Show Cause could result in a

recommendation for dismissal of his case, and he has failed to respond. Accordingly, I respectfully recommend that this action be dismissed without prejudice pursuant to Rule 41(b).

Dated: New York, New York
January 20, 2021

SO ORDERED



SARAH L. CAVE
United States Magistrate Judge